



CITY OF HURST

INVITATION TO BID

The City of Hurst is soliciting sealed bids to award an annual contract for the City's **Residential Asphalt Overlay Program**. The successful contractor will furnish/deliver and install asphalt to City locations as designated by the City whenever ordered during the year. The number of orders placed may vary and the quantities ordered may be greater or less than those listed in these specifications which are based on the City's best estimates.

The successful Contractor shall furnish all materials, labor, tools, equipment, incidentals, and public safety equipment necessary to perform this service as set forth in this Invitation to Bid.

Designate on the front, lower, left hand corner of your response envelope, the following:

Bid Reference Number: 14-016

Subject: Residential Asphalt Overlay Service

Bid Closing Time: 2:00 P.M., Wednesday, April 23, 2014

Note: Submit one original and one copy of your bid to the City. Please note on the front page which one is the original bid.

For Convenience at Bid Opening, Enter Quote on this Cover Page and Include in Sealed Response Envelope. (**Do Not** Place Quoted Prices on the Outside of the Envelope):

Bidder's Name: _____

Total Cost: \$ _____
(Also, Enter Amount in "Authority to Quote" Section)

TABLE OF CONTENTS

Scope and Intent.....	Cover Page
Instructions to Bidders	Page 3
Bond, Insurance, and Indemnity	Page 10
Specifications	Page 11
Authority to Quote	Page 12
References, Attachment I.....	Page 14
Insurance Requirements, Attachment II	Page 15
Standard Form of Agreement, Attachment III	Page 21
Performance Bond	Page 26
Payment Bond.....	Page 28
Maintenance Bond	Page 30

INSTRUCTIONS TO BIDDERS

1. **BID SUBMISSION ADDRESS AND DEADLINE**

Completed bids will be received in Risk/Purchasing, City Hall, 1505 Precinct Line Road, Hurst, TX 76054 until the bid submission deadline (closing time and date) as stated on the cover page. Bid responses received after the closing time and date cannot be considered. Bids faxed or submitted via other electronic methods cannot be accepted.

If you do not wish to bid at this time, please submit a “No Bid” by the same time and date at the same location as stated for bidding.

2. **SIGNATURES**

All bid responses are required to be signed by an authorized representative of the bidding entity. Bid responses received unsigned will not be accepted.

3. **DEVIATIONS BETWEEN BID SPECIFICATIONS AND INSTALLED ITEM(S)**

Prior to acceptance of any quoted commodity, the City reserves the right to perform a visual inspection and physical demonstration to verify compliance with all bid specifications and operational requirements. Should the commodity fail to meet the specifications of the bid, the successful Bidder agrees that the City may elect to do any of one of the following:

- A. Reject the bid and void the purchase as to any and all items so bid.
- B. Require specific performance by the successful Bidder at no additional cost to the City.

4. **SAMPLES**

Samples of items used in this project, when required, must be furnished free, and, if the Bidder has not requested the return of the samples within 30 days from the bid opening date, the samples may be disposed of by the City.

5. **ALTERING BIDS**

Bids cannot be altered, amended or withdrawn by the Bidder after the bid opening deadline. Any interlineations, alteration, or erasure made before this deadline, must be initialed by the signer of the bid, guaranteeing authenticity.

6. **MODIFICATIONS AND AMENDMENTS**

The City shall have the right to modify the specifications prior to the bid submission deadline and will endeavor to notify all potential Bidders that have received a copy of the bid specifications, but failure to notify shall impose no obligation or liability on the City.

7. **BID WITHDRAWAL OR REJECTION**

The City reserves the right to withdraw the request for bids for any reason. The City further reserves the right to accept or reject part or all of any specific bid or all bids and to accept or reject any trade-in.

8. **LATE BIDS**
The City of Hurst is not responsible for lateness or non-delivery of mail, carrier, etc. to the City, and the time and date recorded in the Purchasing Office shall be the official time of receipt.
9. **IDENTICAL BIDS**
In the event of two or more identical low bids, the contract will be awarded as prescribed by Chapter 271, Subchapter Z, Section 271.901 of Vernon's Texas Local Government Codes Annotated.
10. **PRICES HELD FIRM**
All prices quoted by the Bidder will remain firm for a minimum of 90 days from the date of the bid unless otherwise specified by the City or Bidder.
11. **PACKING, CRATING, AND CARTAGE**
Not Applicable
12. **DESTINATION CHARGES**
All materials and equipment used for this service shall be included in the Bidder's quote, including all destination charges.
13. **RISK OF LOSS**
The risk of loss of the project shall not pass to the City until the City actually receives, takes possession, and executes final acceptance of the project.
14. **CONTRACT COMPLETION DATE**
A delivery or contract completion date is to be provided by the Bidder unless otherwise stated in the City's specifications. This date may, where time is of the essence, determine the contract award. Fees for delay may be assessed beginning on the first day following the maximum delivery or completion time as stated in the plans and specifications.
15. **DEVIATION FROM SPECIFICATIONS**
Any deviations from specifications and alternate bids must be clearly shown with complete information provided by the Bidder. They may or may not be considered by the City.
16. **MODIFICATIONS AND AMENDMENTS**
The City shall have the right to modify the specifications prior to the bid submission deadline and will endeavor to notify all potential bidders that have received a copy of the bid specifications, but failure to notify shall impose no obligation or liability on the City.
17. **UNIT PRICES AND EXTENSIONS**
If unit prices and their extensions do not coincide, the City may accept the bid for the lesser amount.
18. **WARRANTY**
Guarantees and warranties should be attached as part of the bid as they may be a consideration in making the award.

19. **ASSIGNMENT**

The successful Bidder's rights and duties awarded by the agreement may not be assigned to another without the written consent of the City signed by the City's authorized agent. Such consent shall not relieve the assignor of the liability in the event of default by the assignee.

20. **BID AMBIGUITY**

Any ambiguity in the bid as a result of omission, error, lack of clarity or non-compliance by the Bidder with the specifications, instructions, and all conditions of bidding shall be construed in the favor of the City.

21. **CHANGE ORDERS**

No oral statement of any person shall modify or otherwise change, or affect the terms, conditions, or specifications. All change orders to the agreement will be made in writing and shall not be effective unless signed by an authorized representative of the City.

22. **LIENS**

The successful Bidder agrees to and shall indemnify and save harmless the City of Hurst against any and all liens and encumbrances for all labor, goods, and services which may be provided under the City's request, by seller or seller's Supplier(s) and if the City requests, a proper release of all liens or satisfactory evidence of freedom from liens shall be delivered to the City.

23. **PATENT INDEMNITY**

The successful Bidder hereby warrants that the use or sale of the products and materials delivered hereunder will not infringe on the rights of any patent, copyright, or registered trademark, covering such materials and the successful Bidder agrees to indemnify and hold harmless the City of any and all costs, expenses, judgments, and damages which the City may have to pay or incur.

24. **GRATUITIES/BRIBES**

The City may, by written notice to the successful Bidder, cancel this agreement without liability to the successful Bidder if it is determined by the City that gratuities or bribes in the form of entertainment, gifts, or otherwise, were offered or given by the successful Bidder, or its agent or representative to any City officer, employee, or elected representative with the respect to the performance of the agreement. In addition, the successful Bidder may be subject to penalties stated in Title 8 of the Texas Penal Code.

25. **RESPONSE FORM TO BE USED**

Unless otherwise stated in these specifications, the bid quote must be submitted on the form provided.

26. **SPECIAL TOOLS**

No special tools are required for this bid.

27. **OPERATIONAL MANUALS and INFORMATION**

If requested by the City, the Bidder shall provide descriptive literature for proper evaluation of any product quoted.

28. **SAFETY DATA SHEETS (SDS)**

If requested by the City, a SDS for the product quoted will be provided the City.

29. **EMPLOYEE TRAINING**

The successful Bidder shall provide on-site (or classroom, if applicable) instruction to the designated City employee(s) as required to safely use the equipment installed. The cost of this instruction (if any) shall be included in the quote submitted to the City.

30. **DELIVERY DATE AND LOCATION**

The Bidder shall provide in the "Authority to Quote" section the maximum number of days to deliver the product after receipt of the City's order. This delivery period may determine the award. If the successful Bidder accepts the City's order, but does not deliver in the promised time, fees for delay may be assessed beginning on the first day following the promised delivery date.

The City will endeavor to give at least eight (8) hours notice when ordering, but there may be circumstances that will preclude this prior notification. The City will expect the successful Bidder to honor this bid with prompt, reliable service without additional fees regardless of the length of the notification period.

All deliveries are to be F.O.B., destination, with all delivery charges to be prepaid by the Bidder. The City does not accept C.O.D. or collect shipments.

31. **DURATION OF AGREEMENT and PRICE ADJUSTMENTS**

The successful Bidder will be awarded a twelve (12) month agreement effective the date of award. Prices must not be increased for the entire agreement period. At the City's option, the agreement may be renewed for four (4) additional twelve (12) month periods, then from month-to-month until a new agreement is established or the agreement is terminated. The items purchased under this agreement may be subject to a price increase at the time of renewal based on the current Producers Price Index or Employment Cost Index for your industry or product category as published by the U.S. Department of Labor, Bureau of Labor Statistics. If the Bureau of Labor Statistics does not accumulate data on the products or services defined by these specifications, by mutual agreement, the successful bidder may increase its prices for an amount not to exceed 5%.

Price decreases are allowed at any time.

Any request for a price increase must be presented to the City at least 60 days before the expiration of the current agreement.

32. **TERMINATION OF AGREEMENT**

The City reserves the right to terminate this agreement with ten (10) days written notice if the successful Bidder fails to perform in a manner deemed acceptable to the City. Upon delivery of such notice by the City to the successful Bidder, the successful Bidder shall discontinue all services in connection with the performance of this agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such order or contracts are chargeable to this agreement. As soon as practicable after receipt of notice of termination, the Bidder shall submit a statement to the City for payment of that portion of the agreement successfully performed.

33. **PAYMENT and TAXES**

Payment to the successful Bidder will be as a lump sum payment after satisfactory receipt of the product, as determined by the City, and receipt of invoice or other billing instrument used by the successful Bidder. The City is exempt from Federal Excise and State Tax, therefore, tax must not be included in the bid price.

All prices quoted shall include all charges, including delivery and set-up fees.

34. **WAGE RATES FOR CONSTRUCTION OF A PUBLIC WORK**

All bidders will be required to comply with Chapter 2258, Prevailing Wage Rates of Vernon's Texas Codes Annotated with respect to the payment of prevailing wage rates. This applies to the construction of a public work, including a building, highway, road, excavation, and repair work or other project development or improvement, paid for in whole or in part from public funds, without regard to whether the work is done under the public supervision or direction. A worker is employed on a public work if the worker is employed by the contractor or any subcontractor in the execution of the contract for the project.

A worker employed on a public work by or on behalf of the City shall be paid not less than the general prevailing rate of per diem wages for the work of a similar character in the locality in which the work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work.

The State of Texas has adopted the Federal Davis-Bacon wage rates for the use in Texas and the City pursuant to and in accordance with the Texas Government Code, Section 2258.022. You may access the U. S. Department of Labor web site at the following web address to obtain these rates to be used in Tarrant County:

www.access.gpo.gov/davisbacon/index.html/

It shall be the responsibility of the successful bidder to obtain the proper wage rates from this site for Tarrant County for the type of work defined in these bid specifications.

35. **BRAND or MANUFACTURER'S REFERENCE**

The City of Hurst has determined that any brand name listed in the specifications meets the City's needs. This manufacturer's reference is not intended to be restrictive, but descriptive of the type and quality the City desires to purchase. Quotes for similar manufactured products of like quality will be considered if the bid is fully noted with the manufacturer's brand name and model. The City reserves the right to determine products of equal value.

Bidders will not be allowed to make unauthorized substitutions after award is made.

36. **COOPERATIVE GOVERNMENTAL PURCHASING**

Other Governmental entities utilizing interlocal agreements with the City of Hurst, may desire, but are not obligated, to purchase goods or services defined in this solicitation from the successful Bidder. All purchases by governmental entities, other than the City of Hurst, will be billed directly to and paid by that governmental entity. The City of

Hurst will not be responsible for another governmental entity's debts. Each governmental entity will place their own orders with successful Bidder and be responsible for ensuring full compliance with the bid specifications.

Prior to other governmental entities placing orders, the City of Hurst will notify the successful bidder of their intent.

Please indicate below if you will permit other governmental entities to purchase from your agreement with the City of Hurst.

☐ Yes, Others can purchase; ☐ No, Only the City of Hurst can purchase

37. **NOTIFICATION OF BID SPECIFICATIONS**

Please check below how you learned of these bids specifications:

☐ City Newspaper Advertisement; ☐ DemandStar.com
☐ City Mailed Me a Copy; ☐ Cold Call to the City
☐ City's Web Site ☐ Other: _____

38. **COMMENCEMENT OF WORK**

The successful Bidder will notify the City 24 hours prior to beginning work.

39. **FINANCIAL STATEMENT**

If requested by the City, the bidder shall provide a current financial statement audited by a Certified Public Accountant (CPA).

40. **STANDARD FORM OF AGREEMENT**

The successful Bidder shall agree to use the City's "Standard Form of Agreement". See sample attached.

41. **REFERENCES**

Each Bidder is to provide a minimum of three (3) verifiable references in which the Bidder has provided this or a similar service. List the references on Attachment I.

42. **CLAIMS and DAMAGES**

The Contractor agrees to assist and cooperate with its insurance carrier in the investigation and review of all third-party claims. In the event the Contractor fails to assist and cooperate with its insurance company, the City reserves the right and option to withhold a sum from the next payment due the Contractor or its final payment equal to a reasonable sum equivalent to the claim. In the event the Contractor continues its failure to assist and cooperate with its insurance company for a period of thirty (30) days after the City notifies it that the City has withheld such amount, the City reserves the right and option to resolve and settle the claim with said funds. Any funds in excess of the amount necessary to settle the claim shall be paid to the Contractor.

43. **VIDEO TAPE OF PRE-EXISTING CONDITIONS**

At the City's request, the successful Bidder agrees to video tape, to the City's satisfaction, the property site, and its adjacent areas, prior to the beginning of site preparation or asphalt installation. A copy of this tape shall be given to the City for its records.

44. **CONFLICT OF INTEREST**

Pursuant to the requirements of Section 176.002(a) of the Texas Local Government Code, Suppliers or Respondents who meet the following criteria must fill out a conflict of interest questionnaire no later than the 7th day after the person begins contract discussions or negotiations with the City or submits to the City an application, response to a request for proposals or bids, correspondence or another writing related to a potential agreement with the City:

A Supplier or Respondent that:

- (1) contracts or seeks to contract for the sale or purchase of property, goods, or services with a local governmental entity; or
- (2) is an agent of a person described in Subdivision (1) in the person's business with a local governmental entity. Any person who meets the criteria. As for enforcement to ensure the veracity of the Suppliers, the statute makes it a Class C Misdemeanor to violate the Supplier disclosure provisions.

Additional information and the form to be used to file this notice can be found at:

www.ethics.state.tx.us/whatsnew/conflict_forms.htm.

By submitting a response to this Bid/RFP, supplier, contractor or person represents that it is in compliance with the requirements of Chapter 176 of the Texas Local Government Code.

45. **FUNDING OUT**

The continuation of this annual agreement with the successful bidder is contingent, in part, upon the continued availability of appropriations.

46. **EXCESS OR INCORRECT QUANTITIES**

Materials delivered in error or in excess of the quantity ordered may, at the City's option, be returned at the Bidder's expense.

47. **NUMBER OF BIDS TO SUBMIT TO THE CITY**

Submit one original and one copy of your bid to the City. Please note which one is the original bid.

48. **SPECIFICATION CLARIFICATION**

For clarification to these specifications, contact the City's Street Division at (817) 788-7202 or Risk/Purchasing at (817) 788-7017.

BONDS, INSURANCE, and INDEMNITY

BONDS

Bid Bonds

All bids shall be accompanied by a bid bond and power of attorney issued by a corporate surety authorized (licensed) to do business in the State of Texas and acceptable to the City in the amount of 5% of the total maximum bid as guarantee that the bidder will enter into a contract and execute performance, payment, and (if required) maintenance bonds within ten (10) days after notice of award of contract. In lieu of a bid bond, the City will accept a cashier's check issued on a national or state bank.

Performance, Payment, and Maintenance Bonds

The successful bidder must furnish performance, payment, and maintenance bonds with the appropriate "powers of attorney" in the amount of one hundred percent (100%) of the contract total maximum price from a corporate surety authorized (licensed) by the State of Texas and acceptable to the City. The maintenance bond shall be in effect for a period of two (2) years after final acceptance of the work.

NOTE: Performance, payment, and maintenance bonds will not be required on contracts that do not exceed the sum of \$25,000.

INSURANCE

The successful Bidder shall meet the minimum insurance requirements as defined in Attachment II.

INDEMNITY

The successful Bidder agrees to defend, indemnify, and hold the City and all of its officers, agents, employees, and elected officials whole and harmless to the extent authorized by law against any and all claims for damages, costs, and expenses of persons or property that may arise out of, or be occasioned by, or from any negligent act, or omission of the successful Bidder, or any agent, servant, or employee of the successful Bidder in the execution of the performance of this agreement, without regard to whether such persons are under the direction of City agents or employees.

SPECIFICATIONS

1. **ESTIMATED ANNUAL QUANTITIES**

The City estimates that it will replace approximately 125,000 SY of asphalt paving a year. These estimated quantities are based upon the best available information. The City reserves the right to increase or decrease the quantity by any amount deemed necessary to meet its needs without any adjustments in the quoted price.

2. **MINIMUM QUALITY SPECIFICATIONS**

All products quoted must be in full compliance with acceptable portions of the latest edition of Texas Highway Standard Specifications.

3. **DELIVERY LOCATION**

All deliveries are to be made to the following address:

Streets Division
Various locations within Hurst
City of Hurst Service Center
2001 Precinct Line Road
Hurst, TX 76054

AUTHORITY TO QUOTE

I agree to meet the stated minimum requirements as set forth in these specifications and any documents attached for the total price of:

The following quote includes the cost of all labor, materials, incidentals, tools, and safety equipment.

As Primary Supplier

ITEM	DESCRIPTION	UNIT PRICE	ESTIMATED ANNUAL QTY	TOTAL
1.	Furnish and Install 2-Inch H.M.A.C. Surface Course (Type "D")	\$	125,000 SY	\$
2.	Raise Existing Rings and Covers to New Pavement Grade, To Include Concrete and H.M.A.C. (All Depths)	\$	20 Each	\$
3	Raise Existing Water Valve Stacks and Covers to New Pavement Grade, To Include Concrete and H.M.A.C. (All Depths)	\$	20 Each	\$
TOTAL (Also, place this total on the cover page)				\$

WE AGREE TO SERVE AS A SECONDARY SUPPLIER IF NOT SELECTED AS THE PRIMARY SUPPLIER..... ☐ YES; ☐ NO.

Bidder/Company Name: _____

Authorized Representative: _____

Signed: _____

Title: _____

Address: _____

City, State, & Zip: _____

Date: _____

Telephone: () _____

Fax Number: () _____

E-Mail Address: _____

Est. Delivery Time

After Receipt of Order: _____

Warranty (Please describe): _____

ATTACHMENT I

REFERENCES

Each Bidder is to provide a minimum of three (3) verifiable references in which the Bidder has sold and maintained this or a similar product.

Company Name: _____

Address: _____

Contact Person: _____

Telephone #: () _____

Project Awarded by Reference: _____

Company Name: _____

Address: _____

Contact Person: _____

Telephone #: () _____

Project Awarded by Reference: _____

Company Name: _____

Address: _____

Contact Person: _____

Telephone #: () _____

Project Awarded by Reference: _____

ATTACHMENT II

INSURANCE

SECTION A. Prior to the approval of this agreement/contract by the City, the successful Bidder/Contractor shall furnish a completed Insurance Certificate to the City, which shall be completed by an agent authorized to bind the named underwriters/insurance carriers to the coverages, limits, and termination provisions shown thereon. THE CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY.

INSURANCE COVERAGE REQUIRED

SECTION B. The City reserves the right to review the insurance requirements of this section during the effective period of the contract and to require adjustment of insurance coverages and their limits when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor.

SECTION C. Subject to the Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, the Contractor shall obtain and maintain in full force and effect for the duration of this contract, and any extension hereof, at the Contractor's sole expense, insurance coverage written by companies approved by the State of Texas and acceptable to the City, in the following types and amounts:

	TYPE	AMOUNT
1.	Workers' Compensation and Employer's Liability	Statutory \$100,000/500,000/100,000

	TYPE	AMOUNT
2.	Commercial General (Public) Liability insurance including coverage for the following: a. Premises Operations b. Independent contractors c. Products/completed operations d. Personal injury e. Advertising injury f. Contractual liability g. Medical payments	Combined single limit for bodily injury and property damage in the amount of \$500,000 per occurrence or its equivalent.

	TYPE	AMOUNT
3.	Comprehensive Automobile insurance, including coverage for loading and unloading hazards, for: a. Owned/leased vehicles b. Non-owned vehicles c. Hired vehicles	Combined single limit for bodily injury and property damage in the amount of \$500,000 per accident or its equivalent.

ADDITIONAL POLICY ENDORSEMENTS

The City shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by the City, the Contractor shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.

REQUIRED PROVISIONS

The successful Contractor agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate, or its attachment, the following required provisions:

- A. Name the City of Hurst and its officer, employees, and elected representatives as additional insureds, (as the interest of each insured may appear) as to all applicable coverage;
- B. Provide for 30 days notice to the City for cancellation, nonrenewal, or material change; 10 days notice for workers' compensation coverage;
- C. The Contractor agrees to waive subrogation against the City of Hurst, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance;
- D. All copies of the certificates of insurance shall reference the project name or bid number for which the insurance applies;
- E. Provide that all provisions of this agreement concerning liability, duty, and standard of care, together with the indemnification provision, shall be underwritten by contractual liability sufficient to include such obligations within applicable policies;
- F. For coverages that are only available with claims made policies, the required period of coverage will be determined by the following formula: Continuous coverage for the life

of the contract, plus one year (to provide coverage for the warranty period) and an extended discovery period for a minimum of 5 years which shall begin at the end of the warranty period;

- G. Provide for notice to the City of Hurst at the two addresses shown below by registered mail.

NOTICES

The Contractor shall notify the City in the event of any change in coverage and shall give such notices not less than 30 days prior to the change. The notice must be accompanied by a replacement Certificate of Insurance.

All notices shall be given to the City at the following two addresses:

Street Division
City of Hurst Public Works Department
2001 Precinct Line Road
Hurst, TX 76054

Risk/Purchasing
City Hall
1505 Precinct Line Road
Hurst, TX 76054

SECTION D. Approval, disapproval, or failure to act by the City of Hurst regarding any insurance supplied by the Contractor shall not relieve the Contractor of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate the Contractor from liability.

**WORKERS' COMPENSATION INSURANCE
FOR
BUILDING OR CONSTRUCTION PROJECTS**

TEXAS WORKERS' COMPENSATION COMMISSION RULE 28, §110.110

As required by the Texas Workers' Compensation Commission Rule 28, §110.110, the Contractor shall accept the following definitions and comply with the following provisions:

Workers' Compensation Insurance Coverage

A. Definitions:

Certificate of coverage ("certificate") – A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the Project – includes the time from the beginning of the work on the project until the Contractor's/Person's work on the project has been completed and accepted by the City of Hurst.

Persons providing services on the project ("Subcontractor" in §406.096) – includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employee of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all employees of the Contractor providing services on the project, for the duration of the project.
- C. The Contractor must provide a certificate of coverage to the City of Hurst prior to being awarded the contract.
- D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the City of Hurst showing that coverage has been extended.

- E. The Contractor shall obtain from each person providing services on a project, and provide to the City of Hurst:
- (1) A certificate of coverage, prior to that person beginning work on the project, so the City of Hurst will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (2) No later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- G. The Contractor shall notify the City of Hurst in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The Contractor shall post on each project site a notice, in the text, form, and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
- (1) Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all of its employees providing services on the project, for the duration of the project;
 - (2) Provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - (3) Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (4) Obtain from each other person with whom it contracts, and provide to the Contractor:
 - (a) A Certificate of coverage prior to the other person beginning work on the project; and
 - (b) A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

- (5) Retain all required certificates of coverage on file for the duration of the project, and for one year thereafter;
 - (6) Notify the City of Hurst in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - (7) Contractually require each person with whom it contracts, to perform as required by paragraphs (1) – (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the City of Hurst that all employees of the Contractor who provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the City of Hurst to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the City of Hurst.

As defined by the Texas Labor Code, Chapter 269, Section 406.096 (e), building or construction is defined as:

- 1. Erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;
- 2. Remodeling, extending, repairing, or demolishing a structure; or
- 3. Otherwise improving real property or an appurtenance to real property through similar activities.

The employment of a maintenance employee who is not engaging in building or construction as the employer's primary business does not constitute engaging in building or construction.

ATTACHMENT III

(Sample, Only; Do Not Complete Unless Awarded the Bid)

STANDARD FORM OF AGREEMENT BETWEEN THE CITY OF HURST AND CONTRACTOR

THIS AGREEMENT is effective as of the date stated on the signatory page by and between the City of Hurst (hereinafter called OWNER) and

of the City of _____, County of _____,

State of _____ (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

The PROJECT for the Work detailed under the Contract Documents (see Article 7 of this Agreement for items included in the "Contract Documents") is generally identified as follows:

Residential Asphalt Overlay Service
Bid Reference Number: 14-016

Article 2. CONTRACT TIME

2.1. This contract will begin on its execution and continue for 12 months. The City, at its option, may renew this agreement annually for a maximum of four additional 12-month periods.

2.2. OWNER and CONTRACTOR recognize that time is of the essence with this agreement and OWNER and CONTRACTOR agree that if the CONTRACTOR does not complete each assigned job within the time frame agreed upon at the time of assignment, plus written extensions allowed by OWNER, that OWNER shall deduct \$100 a working day from the amount due CONTRACTOR for delay (but not as a penalty) for each day that expires after the completion date mutually agreed upon at the time of assignment.

Article 3. CONTRACT PRICE.

3.1 OWNER shall pay CONTRACTOR price as quoted in Contractor's bid plus additional work performed when authorized by OWNER.

Article 4. PAYMENT PROCEDURES.

4.1 Payment to CONTRACTOR will in one lump sum after satisfactory completion, and acceptance by the City, of the work defined in the contract documents and receipt of

invoice or other billing instrument used by CONTRACTOR. All charges are to be less sales tax as OWNER is tax exempt.

Article 5. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this agreement CONTRACTOR makes the following representations:

5.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract, Documents, Work to be performed, site(s), locality, tests, reports, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

5.2 CONTRACTOR has correlated the results of all such observations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents.

5.3 CONTRACTOR has given OWNER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution by OWNER is acceptable to CONTRACTOR.

Article 6. MISCELLANEOUS

6.1 ASSIGNMENTS: No assignments by a party hereto of any rights under or interest in the Contract Documents will be binding on another party hereto without written consent of the party sought to be bound; and specifically, but without limitation, moneys that may come due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

6.2 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements, and obligations contained in the Contract Documents.

6.3 TERMINATION: OWNER may terminate the Contract by giving CONTRACTOR notice in writing. Upon delivery of such notice by OWNER to CONTRACTOR, CONTRACTOR shall discontinue all services in connection with the performance of the Contract and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Contract. As soon as practicable after receipt of notice of termination, CONTRACTOR shall submit a statement, showing in detail the services performed under this Contract to the date of the termination. OWNER shall then pay CONTRACTOR that portion of the prescribed charges which the services actually performed under this Contract bear to the total services called for under this Contract less such payments on account of the changes as have been previously made. Copies of all completed designs, plans, and specifications prepared under this Contract shall be delivered to OWNER when and if this Contract is terminated.

6.4 CLEANUP:

During Work

CONTRACTOR shall, at all times, keep the job site free from materials, debris, and rubbish as is practical and shall remove same from any portion of the job site when, in the opinion of the City's representative, it becomes objectionable, interferes with the project or endangers the safety of the general public.

Final

Upon completion of the work, CONTRACTOR shall remove from the site, all materials, tools and equipment belonging to him, and leave the site with an appearance acceptable to the City's representative. CONTRACTOR shall thoroughly clean all equipment and material installed by him and shall deliver over such materials and equipment in a clean and new appearing condition. Any area damaged or disturbed by CONTRACTOR outside the City rights of way and easements shall be restored to original condition to the satisfaction of the property owner. A release from the property owner may be required. Restoration of all other areas outside the actual work site shall be to original condition or as outlined in the Contract Documents.

6.5 SUBCONTRACTING

1. CONTRACTOR may utilize the services of specialty subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors.

2. CONTRACTOR shall not award any work to any subcontractor until CONTRACTOR submits to OWNER a written statement concerning the proposed award to the subcontractor, which statement shall contain such information as OWNER may require.

3. CONTRACTOR shall be as fully responsible to OWNER for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

4. CONTRACTOR shall have a person, that is on his payroll and with the authority to make decisions, on site at all times. This individual must be able to communicate in English.

5. Nothing contained in this Contract shall create any contractual relation between any subcontractor and OWNER. CONTRACTOR is an independent contractor.

6.6 PERMITS AND LICENSES: CONTRACTOR shall procure at his expense all permits and licenses necessary, pay all charges and fees and give all notices necessary and incident to the prosecution of the work. Fees, except for special licensing, such as Master Electrician, etc., will be waived for required City permits.

- 6.7 **EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE:** CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or disability. CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, sex, religion, national origin, or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations, rates of pay, or other forms of compensation, selection of training, including apprenticeship, and participating in recreational and education activities. CONTRACTOR will in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration of employment without regard to race, color, sex, religion, national origin, or disability. CONTRACTOR will cause the foregoing provisions to be inserted in all subcontracts for standard commercial supplies, raw materials, and labor.
- 6.8 **INSURANCE:** Prior to execution of this Contract, and before CONTRACTOR begins Work, CONTRACTOR must provide OWNER with proof of insurance as defined in the Contract Documents.
- 6.9 **SAFETY:** CONTRACTOR shall comply with all Occupational Safety and Health Act (OSHA) standards and any other Federal, State or Local rules and regulations applicable to construction and/or maintenance activities in the State of Texas.
- City Safety Personnel or any supervisor may, but are not required to, order that the work be stopped if a condition of immediate danger is found to exist. Nothing contained herein shall be construed to shift responsibility or risk or loss for injuries or damage sustained as a result of a violation of these safety articles from CONTRACTOR to OWNER. CONTRACTOR shall remain solely and exclusively responsible for compliance with all safety requirements and for the safety of all persons and property at the project site.
- 6.10 **CLAIMS and DAMAGES:** Any bodily injury or property damage to OWNER or third parties caused by CONTRACTOR, his employees, agents, or subcontractors must be resolved to OWNER's satisfaction prior to OWNER's release of CONTRACTOR's final payment.

Article 7. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between CONTRACTOR and OWNER concerning the work consist of the following:

- 7.1 Invitation to Bid
- 7.2 Bid Specifications and CONTRACTOR's Response
- 7.3 Insurance Attachment
- 7.4 Insurance Certificate (completed by CONTRACTOR's insurance agent/broker)
- 7.5 Bid, Performance, Payment, and Maintenance Bonds

Executed on behalf of CONTRACTOR by its owner or authorized representative shown below,
and on behalf of OWNER by its authorized representative, this agreement will be effective on

the _____ day of _____, 2014.

OWNER:

City of Hurst

1505 Precinct Line Road

Hurst, TX 76054

CONTRACTOR:

Name: _____

Address: _____

City: _____

State: _____

Zip: _____

By: _____

By: _____

(Print Name)

(Print Name)

City Manager

(Print Title)

Seal (If Corporation)

Recommended By:

(Signature)

(Print Name)

Public Works Director

Approved as to Form and Legality this _____ day of _____, 2014.

City Attorney

PERFORMANCE BOND

STATE OF TEXAS

COUNTY OF _____

KNOWN ALL MEN BY THESE PRESENTS: That _____ of the
City of _____, County of _____ and the State
of _____ as Principal, and _____
authorized under the laws of the State of Texas to act as surety on bonds for principals, are held
and firmly bound unto _____ The City of Hurst _____ (Owner), in the penal
sum of _____ Dollars (\$ _____) for
the payment whereof, the said Principal and Surety bind themselves, and their heirs,
administrators, executors, successors, and assigns, jointly and severally, by these presents:

WHEREAS: the Principal has entered into a certain written contract with the Owner, dated the
_____ day of _____, 20____, to which contract is hereby referred to and
made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE THE CONDITIONS OF THIS OBLIGATION IS SUCH, that if
the said Principal shall faithfully perform said Contract and shall in all respects duly and
faithfully observe and perform all and singular the covenants, conditions, and agreements in and
by said contract agreed and covenanted by the Principal to be observed and conformed, and
according to the true and meaning of said Contract and the Plans and Specifications hereto
annexed, then this obligation shall be void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond executed pursuant to the provisions of (Article
5160) for Public Works)(Article 5472d for Private Work)* of the Revised Civil Statutes of Texas
as amended and all liabilities of this bond shall be determined in accordance with the provisions
of said Article to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no charge, extension of time,
alteration or addition to the terms of the contract, or to the work performed thereunder, or the
plans, specifications, or drawing accompany accompanying the same , shall in anyway affect its
obligation on this bond, and it does hereby waive notice of any such change, extension of time,
alteration or addition to the terms of the contract, or to the work to be performed thereunder.

* Not applicable for federal work. See "The Miller Act" 40 U.S.C. S270

IN WITNESS, WHEREOF, the said Principal and Surety have signed and sealed this instrument
this _____ day of _____, 20____.

Principal

Surety

By: _____

By: _____

Title: _____

Title: _____

Address: _____

Address: _____

The name and address of the Resident Agent or Surety is:

PAYMENT BOND

STATE OF TEXAS

COUNTY OF _____

KNOWN ALL MEN BY THESE PRESENTS: That _____ of the
City of _____, County of _____ and the State
of _____ as Principal, and _____
authorized under the laws of the State of Texas to act as surety on bonds for principals, are held
and firmly bound unto _____ the City of Hurst (Owner), in the penal
sum of _____ Dollars (\$_____) for
the payment whereof, the said Principal and Surety bind themselves, and their heirs,
administrators, executors, successors, and assigns, jointly and severally, by these presents:

WHEREAS: the Principal has entered into a certain written contract with the Owner, dated the
_____ day of _____, 20____, to which contract is hereby referred to and
made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE THE CONDITIONS OF THIS OBLIGATION IS SUCH, that if
the said Principal shall pay all claimants supplying labor and material to him or a subcontractor
in the prosecution of the work provided for in said contract, then, this obligation shall be void;
otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond executed pursuant to the provisions of Article
5160 for Public Works of the Revised Civil Statutes of Texas as amended and all liabilities of
this bond shall be determined in accordance with the provisions of said Article to the same extent
as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no charge, extension of time,
alteration or addition to the terms of the contract, or to the work performed thereunder, or the
plans, specifications, or drawing accompany the same, shall in anyway affect its obligation on
this bond, and it does hereby waive notice of any such change, extension of time, alteration or
addition to the terms of the contract, or to the work to be performed thereunder.

IN WITNESS, WHEREOF, the said Principal and Surety have signed and sealed this instrument
this _____ day of _____, 20____.

Principal

Surety

By: _____

By: _____

Title: _____

Title: _____

Address: _____

Address: _____

The name and address of the Resident Agent or Surety is:

MAINTENANCE BOND

KNOWN ALL MEN BY THESE PRESENTS:

THAT _____ as PRINCIPAL, and
_____ a CORPORATION organized under

the laws of _____, as Sureties, do hereby expressly acknowledge themselves to be held and bound to pay unto the City of Hurst, a municipal corporation chartered by virtue of a Special Act of the Legislature of the State of Texas, at Hurst, Tarrant County,

Texas, the sum of _____ Dollars (\$ _____) for the payment of which sum will and truly to be made until said City of Hurst, its successors jointly and severally.

This obligation is conditioned, however, that whereas said _____
has this _____ day of _____, 20____, entered into a written contract with
the said City of Hurst to build and construct the _____

_____ in the City of Hurst, Texas, which contract and the Plans and Specifications therein mentioned adopted by the City of Hurst, are hereby expressly made a part hereof as though the same were written and embodied herein.

WHEREAS, under the plans and Specifications, and contract, it is provided that the CONTRACTOR will maintain and keep in good repair the work herein contracted to be done and performed for a period of two (2) years from the date of acceptance, and to do all necessary repairs that may arise on account of water leakage or otherwise, out of or arising from improper doing of the same, or on account of any defect arising in any parts of said work laid or constructed by the said CONTRACTOR, or on account of improper application or workmanship; and to respond to within five days and initiate repairs after proper notification of said repairs due to leakage, or otherwise, that may arise during the two (2) year period from the date of acceptance. It being understood that the purpose of this section is to cover all defective conditions arising by reason of defective material, work, or labor performed by said CONTRACTOR; and in case the said CONTRACTOR shall fail to do so, it is agreed that the City may do said work and supply such materials, and charge the same against the said CONTRACTOR and SURETIES, on this obligation, and said CONTRACTOR and SURETIES hereon shall be subject to the liquidated damages mentioned in said contract for each day's failure on its part to comply with the terms of the said provision of said contract.

NOW, THEREFORE, if the said CONTRACTOR shall keep and perform its said agreement to maintain said work and keep the same in repair for the said maintenance period of two (2) years, as provided, then these presents shall by null and void, and have no further effect, but if default

shall be made by the said CONTRACTOR in the performance of this contract to so maintain and repair said work, then these presents shall have full force and effect, and said CITY of HURST shall have and recover from said CONTRACTOR and SURETIES damages in the premises, as provided, and is further agreed that this obligation shall be continuing one against the PRINCIPAL and SURETIES, hereon, and that successive recoveries may be had thereon for successive breaches until the full amount shall have been exhausted; and it is further understood that the obligation herein to maintain said work shall continue throughout said maintenance period, and the same shall not be changed, diminished, or in any manner affected from any cause during said time.

IN WITNESS WHEREOF, the said _____ has caused these presents to be executed by them; and the said _____ has caused these presents to be executed by its ATTORNEY-IN-FACT _____ and the said ATTORNEY-IN-FACT _____ has hereunto set his hand this the _____ day of _____, 20____.

_____	_____
Principal	Surety
By: _____	By: _____
Title: _____	Title: _____
Address: _____	Address: _____
_____	_____
_____	_____

The name and address of the Resident Agent or Surety is:

